

It may certainly be argued that the existence of section 22 (6) of the Mohammedan Ordinance barring maintenance proceedings under section 37 of the Minor Offences Ordinance, suggests only limitation where an order for payment has been made, and so where no such order has been made right of action in the Magistrate's Court may lie. But a declaration of *nusus* is more than a negative, it is a finding of recalcitrancy involving a rule of Mohammedan law that the wife is not entitled to any maintenance. I think it would be entirely contrary to the tenor of the Mohammedan Ordinance to allow proceedings in the Magistrate's Court where *no* maintenance is held by the Kathi, and bar such proceedings where liability for maintenance *is* held.

The respondent said frankly in this Court that she declined to return to her husband. Under such circumstances divorce would appear to be the only step. The husband (applicant) refuses to divorce the respondent, and the only avenue available to her is to seek a *Khula* divorce; the respondent should offer and the applicant may accept compensation for the release of marital rights (*Wilson*, 5th edition page 143).

But when the respondent stated that she sought the Magistrate's Court because she was vexed at the applicant obtaining the Kathi's declaration that she was *nusus*, then I consider an abuse of the process of the Magistrate's Court occurred. The dissatisfied respondent could have appealed against the Kathi's decision (section 22(4) of the Mohammedan Ordinance) and still has liberty to petition under section 25 of the same Ordinance.

I am bound to hold that the institution of the claim for maintenance in the Magistrate's Court after the Kathi had expressly found the respondent disentitled to any maintenance was an abuse of process. I therefore allow the motion. The proceedings in the Court below being before me are hereby revised, and in exercise of my powers contained in section 19 of the Courts Ordinance I set aside the order for maintenance.

The result is that the declaration of *nusus* by the Kathi stands alone.

Costs of the proceedings in this Court and in the Court below to be borne by the respondent.

Application allowed.

ESTATE OF LOH AH TONG.
LOH SIEW LAN (f) v. TAN AH ENG (f).

[Orig. Civ. Juris. (Laville, J.) April 28, 1949]

[J.B. — Probate No. 9 of 1941]

Will — Presumption of due execution — Proof of forgery.

In this case the issue before the Court was the genuineness of the signature "Loh Ah Tong" on a Will, sought to be proved before the Court. The will was attested by Mr. Osborne-Jones an Advocate and Solicitor of Singapore and his clerk, but in evidence it appeared that Mr. Osborne-Jones had no personal knowledge of the person who had made the signature on the Will. The clerk who had attested the signature had died. Mr. Y. H. Tsan gave evidence, as an expert on Chinese character writing, that the signature was not made by the deceased.

Held, that the defendant had discharged the onus thrown on her and had proved that the propounded will was a forgery.

Case referred to:—

(1) *In the goods of Mylne* (1905) 9 C.W.N. 986.

PROBATE SUIT.

M. Ismail for the plaintiff.

G. H. Toh for the defendant.

Laville, J. : — In this suit Loh Siew Lan (f) asks the Court to declare in favour of a will appointing her executrix alleged to have been made by her father, Loh Ah Tong alias Loh Soon Chuan, on 10th July, 1937, at Singapore.

The grant of probate of this will is opposed by Tan Ah Eng (f), the second wife of the alleged testator, on the ground that the signature Loh Ah Tong to the will was not inscribed or authorised by Loh Ah Tong, her deceased husband and the father of the plaintiff, but by some other person.

The sole issue therefore is the genuineness of the signature Loh Ah Tong on the said will.

The plaintiff's case is that she is his eldest child born in wedlock, was of full age at the date of the will, and that because his two wives were ignorant, uneducated women and his only natural born son an infant, and his other sons merely so by adoption, it was natural for him to appoint her as executrix of his estate and to leave her the largest portion of it; that the will, Ex. A., is properly executed and attested by two witnesses, one of whom, Mr. D. C. Osborne-Jones, an Advocate and Solicitor of Singapore, and by his clerk, Mr. Goh Lai Mui, and there are no grounds for doubting the authenticity of the signature of Loh Ah Tong on the will, and, if that is so, she is entitled to probate; thirdly that the defendant has produced and

put in evidence a memorandum in Chinese of the same date as that of the will containing a note of the major dispositions of the will, Ex. A., and bearing a signature in Chinese Loh Ah Tong, which clearly shows that Loh Ah Tong on that date had prepared for him a will in the office of Mr. Osborne-Jones, and that Ex. A. is that will.

The evidence of Mr. Osborne-Jones is that he attested the will and so did his clerk, Mr. Goh Lai Mui, who is now dead. He identified his own signature and that of Mr. Goh Lai Mui. He deposed that he had seen the signature Loh Ah Tong inscribed by the testator, but he had no personal knowledge of the identity of the person who had made that signature. It was his professional custom in attesting the execution of documents to satisfy himself by interrogating the parties to a document themselves or his clerk or others as to the identity of the persons executing a document. In the case of this will it was probably his clerk, Goh Lai Mui, who had vouched to him for the identity of the signatory as being the person who was disposing of his estate to the persons mentioned in the will.

It was common ground that Mr. Goh Lai Mui had died in 1947 and his death certificate was exhibited.

Plaintiff's evidence was that her father died in Singapore in June, 1940, when she was in China with her mother, his first wife. Her mother returned on hearing of this to Singapore and she herself followed later and was given the will by her mother. She recognises the signature in the will as her father's, but admits she had never seen him write Chinese, and had never seen him at all except for a short period in 1938.

The will itself is properly executed and following the ruling in *In the goods of Mylne*⁽¹⁾ at p. 988 cited in *Ameer Ali's* 9th Edition of *Woodroffe's Law of Evidence*, at pp. 596 and 839, in view of the fact that Mr. Osborne-Jones is a Solicitor and was acting in the ordinary course of his profession which entailed satisfying himself of the identity of a person executing a document, the Court may fairly be satisfied, in the absence of any grounds for suspicion or any contest, that the maker of the signature Loh Ah Tong on the will was indeed Loh Ah Tong who died in June, 1940.

But in this case there is a contest on this very point, and it is clear from Mr. Osborne-Jones' evidence that he relied on the word of his clerk, Mr. Goh Lai Mui, as to the question of identity of the maker of the signature. Mr. Goh Lai Mui is dead and there is no evidence that he knew Loh Ah Tong, the relative of both contesting parties, prior to the signing of the will in 1937, though the plaintiff says that her mother was known to him.

The memorandum of the will produced by the defendant is produced by her not to support the fact of a will having been made, but in proof of the allegation that the signature Loh Ah Tong on it and on the will can both be seen to be forgeries when compared with Loh Ah Tong's genuine signature on Ex. IV and V. In fact defendant brings the memorandum forward as a forgery made to support the forged will.

The memorandum was obtained according to defendant's evidence — and hers is the only evidence about it — from plaintiff's mother.

The way in which the plaintiff gave evidence was not satisfactory. She was clearly willing to say anything which seemed to support her case and contradicted herself as a result on several relevant issues. For instance, she says: "I have never been long in Malaya and so cannot recognise my father's writing", and again "I have never seen my father write Chinese", and a few minutes later says "I can't say if the signature on the will in Chinese characters is in my father's handwriting; I say they were written by my father; they *were* written by my father." And again in reply to the Court: "My father used to write to me in China."

The defendant's case is that the signature Loh Ah Tong on the will was not put there by her husband and the plaintiff's father, and is not his signature, nor authorised by him.

She produces a photograph of Loh Ah Tong, admitted by the plaintiff to be a photograph of her father after he was injured, which shows an injury deforming his right hand, and her case is that owing to this injury the character writing of Loh Ah Tong after 1934 was not firm and even but jerky and uncertain, and that the signature Loh Ah Tong on the will shows characteristics not to be found in Loh Ah Tong's handwriting after his injury either when using a brush or when using a pen.

She exhibits 4 Chinese documents:—

Ex. II. A receipt for a Singer Sewing Machine endorsed in Chinese brush characters "12 moon It Hai — 1936 Singer Sewing Machine document."

This endorsement she claims she saw her husband make in 1936.

Ex. III. A transfer to Loh Soon Chuan — it is admitted by both parties that Loh Soon Chuan was the correct name of Loh Ah Tong — on which he had endorsed a list of expenses in Chinese brush characters in July, 1938.

Ex. IV. A bill of sale dated 3rd July, 1938 signed by Loh Soon Chuan in pen and ink Chinese characters as purchaser.

Ex. V. A duplicate of above similarly signed.

Ex. II and III, she states, when compared with the memorandum—all 3 being in brush characters—show that the latter was not written by the man who wrote the former two, i.e. Loh Ah Tong. In my view the latter has finer brush work and more clarity of outline in its characters than Ex. II and III.

The comparison between the signature Loh Ah Tong on the memorandum and on the will is complicated by the fact that the former is brushed on and the latter in ink. I venture no opinion on these two signatures.

Ex. IV and V can only be compared with the signature of the will in regard to the character Loh: both are written in ink. In my opinion the signatures on Ex. IV and V are definitely less sure in stroke and outline than that on the will.

It was never suggested by the plaintiff in cross-examination of the defendant that these 4 documents were not in the writing of her father Loh Ah Tong; her allegation was that the will and memorandum also were in his writing.

The defendant called as an expert on Chinese character writing Dr. Yu Huan Tsan. This gentleman is a Barrister and a graduate of Cambridge University and a holder of a doctorate degree of the Imperial Palace in Peking and has held position of Attache in the Chinese Legations in Oslo, Berlin and London. He, in order to obtain his doctorate, had to make a special study of Chinese writing, and has given evidence before the Supreme Court of the Colony of Singapore as an expert on Chinese writing very recently.

His opinion is that Ex. II and III were written by the same person and disclose signs of having been written by a person suffering from some physical disability of the hand. They were not written by the same person as wrote the signature Loh Ah Tong on Ex. A., the will.

In Ex. IV and V the character Loh was not written by the same hand as wrote it on Ex. A.

As to Loh Ah Tong on the memorandum, this witness is definite that it was not written by the same person who wrote Ex. II and III, and though possibly written by the hand that signed Ex. A. does not think it was.

The witness is also definitely of opinion that the signature on Ex. A. Loh Ah Tong was an attempt to imitate a shaky signature.

The credentials of this witness were in no way attacked by the plaintiff and I accept him as being an expert on Chinese calligraphy.

In this case the defendant has not pleaded forgery specifically, but has clearly shown by para. 2 of her defence that the issue raised is forgery, and in my view the plaintiff could not have been left in any doubt after the filing of the defence as to the nature thereof. The onus is therefore on the defendant to prove that the signature Loh Ah Tong on the will is not genuine.

I have already held that the initial presumption in favour of the genuineness of the signature of a properly executed will has been lessened by the evidence of Mr. Osborne-Jones as to the circumstances surrounding the identification to him of the signatory, and by the evidence of the plaintiff herself. There are other circumstances which tend to lessen the presumption that this was the will of Loh Ah Tong. It is important, and was to the older generation of Chinese very important, that the line should be carried on by a male heir; it is clear that Loh Ah Tong was of this opinion and, though he had a natural born daughter, he adopted several sons in accordance with Chinese custom to carry on the line; defendant, Tan Ah Eng, in his last years gave him a son of his own. It would be natural and customary that in disposition of his property this son and the other sons would be preferred before his daughters; yet in this will the major portion of the estate is passed to his daughter.

Again Dr. Yu Huan Tsan has stated that an old-fashioned Chinese when writing horizontally would naturally write from right to left. In Ex. IV and V, which are formal documents said to be signed by Loh Ah Tong, the character Loh is on the right of the signature; no attack was made on the genuineness of these documents. In the will itself the character Loh appears on the left. It seems improbable that a man who usually wrote from right to left would suddenly change his method of writing.

Finally, we have the evidence of Dr. Yu Huan Tsan as an expert and he is definitely of opinion that the signature on the will is an attempt to imitate a shaky signature.

It is also of significance that Loh Ah Tong should use his nick name in a formal document such as a will, though in other formal documents such as Ex. IV and V he uses his full name; and secondly it is strange that he should leave to a daughter whom he has seen

only for a very short period during his life the bulk of his estate.

I hold therefore that on all the evidence led in this case the presumption of genuineness of the signature on the will, Ex. A., cannot stand and that on the evidence led by the defendant and especially on that given by Dr. Yu Huan Tsan, that the signature Loh Ah Tong on the will was not made by him, and there is no evidence to show that it was authorised by him. It is not, I think, for the defendant to prove who made the signature or when or where, nor can it be deduced from the evidence. I am satisfied it is a forgery and on the whole evidence, not forgetting the demeanour of the plaintiff as a witness and that of defendant, I hold that the defendant has discharged the onus thrown on her and proved that the propounded will is a forgery.

The petition for probate will therefore be dismissed. Costs will be paid out of the estate.

Petition for Probate dismissed.

YAP POH HENG v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) March 8, 1949]

[Singapore — Magistrate's Appeal No. 210 of 1948]

Minor Offence Ordinance, s. 34(1) — Fraudulent possession of property — Onus on accused person.

In this case the learned Magistrate convicted the appellant on a charge under section 34(1) of the Minor Offences Ordinance and in his ground of judgment said: "the matter to be decided in this case is whether the explanation of the accused as to his possession of the bicycle was a reasonable and probable explanation and such that the Court was bound to accept his explanation".

Held, that this was considerably beyond what was required of an accused person under the section and therefore the conviction cannot stand.

MAGISTRATE'S APPEAL.

G. H. Poh for the appellant.

A. V. Winslow (D. P. P.) for the Crown.

Murray-Aynsley, C.J. : — In this case the appellant was convicted on a charge under section 34(1) of Cap. 24.

In his grounds of judgment the learned Magistrate said: "the matter to be decided in this case is whether the explanation of the accused as to his possession of the bicycle was a reasonable and probable explanation and such that the Court was bound to accept his explanation."

It appears to me that this goes considerably beyond what is required of a person accused under this section and, therefore, the conviction cannot stand, even if the circumstances were such as to require an explanation, which is doubtful.

The appeal is, therefore, allowed and the conviction quashed.

Appeal allowed.